

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FREDDIE PICKENS)	
Claimant)	
VS.)	
)	Docket No. 242,320
CONTINENTAL PLASTICS)	
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the January 22, 2003 Post Medical Award entered by Administrative Law Judge Julie A. N. Sample. The Board placed this proceeding on its summary calendar for determination without oral argument. For purposes of the Workers Compensation Act, the hearing date is considered to be February 28, 2003. Jeffrey K. Cooper of Topeka, Kansas, was appointed as Board Member pro tem to serve in place of retired Board Member Gary M. Peterson.

APPEARANCES

Chris Miller of Lawrence, Kansas, appeared for claimant. Clifford K. Stubbs of Roeland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Post Medical Award.

ISSUES

This is a claim for a January 11, 1999 accident and resulting back injury, which was settled reserving claimant's right to request future medical treatment. Claimant initiated this post-award proceeding to request psychiatric treatment and temporary total disability benefits. In the January 22, 2003 Post Medical Award, Judge Sample ordered psychiatric treatment but denied the request for temporary total disability benefits.

Claimant disagrees with Judge Sample's Post Medical Award. Claimant contends the Judge erred by denying his request for temporary total disability benefits. Respondent and its insurance carrier also disagree with the Post Medical Award. They contend the Judge erred by awarding claimant psychiatric treatment.

The only issues before the Board on this appeal are:

1. Did claimant's January 11, 1999 back injury worsen or aggravate his preexisting psychological condition?
2. If so, is claimant presently entitled to receive temporary total disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The January 22, 2003 Post Medical Award should be modified to award claimant temporary total disability benefits.

Except as noted below, the Board adopts the findings and conclusions set forth by the Judge in the Post Medical Award. In summary, claimant sustained a low back injury while working for respondent on January 11, 1999, and ultimately underwent an arthroscopic microdiscectomy. In August 2000, the parties settled this claim based upon claimant's functional impairment rating, reserving claimant's right to pursue additional medical benefits, if needed.

Following the January 1999 accident, claimant continued to work for respondent. But on February 5, 2001, claimant took a gun to work intending to threaten his supervisors to stop perceived harassment. Fortunately, claimant left the gun in his car. Following that incident, claimant was suspended and ultimately terminated from his job. Consequently, claimant is no longer employed in a job that he had held for more than 20 years.

Claimant acknowledges that he had psychological issues before the January 1999 accident. But he contends the January 1999 work-related back injury worsened or aggravated those psychological problems. The present record supports that conclusion.

Dr. John H. Henderson, Jr., a psychiatrist who began treating claimant in February 2001, believes claimant suffers from major depression and anxiety disorder. According to the doctor, for a number of years claimant has experienced chronic depression, which worsened and progressed to major depression due, in part, to the January 1999 back injury and the resulting chronic pain. When the doctor testified in April 2002, the doctor did not

believe claimant was capable of working. In an August 31, 2001 letter to claimant's attorney, the doctor wrote, in part:

I wish to state that there is a direct causal of *[sic]* relationship between Mr. Picken's *[sic]* condition for which I am treating and his work related injuries. His back pain adds to his emotional stress while at the same time, lowering his tolerance for all other stresses and makes him unable to ignore even the smallest insults he may receive on the job. There is a vicious cycle going. The physical pain makes him emotionally hypersensitive and the emotional pain aggravates the physical pain.

. . . .

It is my opinion that Mr. Pickens has been unable to engage in any substantial gainful employment during the time which I have been treating him.

The record also includes the opinions from Dr. G. R. Wurster, who is the psychiatrist selected by the Judge to evaluate claimant for purposes of this claim. Following the evaluation, the doctor provided the Judge his February 8, 2002 report in which the doctor diagnosed major depression, personality disorder with paranoid traits and chronic low back pain.

Respondent and its insurance carrier also deposed the doctor. According to Dr. Wurster, claimant was seriously impaired in social and occupational functioning when they met in February 2002. At their meeting, claimant appeared very depressed, apathetic, helpless and hopeless. Dr. Wurster initially questioned claimant's ability to work as the doctor opined in his February 8, 2002 report that claimant's psychological condition rendered him unable to perform substantial, gainful employment. But the doctor was less certain whether claimant was totally disabled after learning that claimant had spent approximately two weeks in April 2002 in Louisiana with his Army reserve unit. Dr. Wurster, however, testified that Dr. Henderson, claimant's treating physician, would be in the best position to assess claimant's ability to work. Dr. Wurster testified, in part:

Q. (Mr. Miller) . . . Are there other difficulties [besides relating to coworkers] that he would have from a psychological standpoint in terms of returning to some alternate employment other than Continental?

A. (Dr. Wurster) I think just the depth of his depression. If his depression got a little bit better, if he got a little more energy, if he was sleeping a little better, then maybe he could do any kind of work other than hard manual labor. Depression is not a static situation. It can wax and wane and, you know, if he got like maybe -- possibly

when he was with the military, he might have felt quite a bit better during that period of time, I don't know.¹

The third medical opinion in the record comes from Dr. Patrick L. Hughes, whom respondent and its insurance carrier hired to evaluate claimant for this proceeding. The doctor saw claimant in May 2002 and determined that claimant had a paranoid personality disorder, rather than major depression as Drs. Henderson and Wurster had diagnosed. And paranoid personality disorder neither worsens nor improves despite what happens in a person's life. According to Dr. Hughes, claimant needs anti-paranoia medication as well as an increase in his anti-depression medication. Moreover, Dr. Hughes believes claimant is able to pursue gainful employment and that his chances to procure such employment would improve if only Dr. Henderson would prescribe the appropriate medications in the correct dosages.

After carefully considering the various medical opinions, the Board affirms the Judge's finding that claimant's psychiatric condition is related to his January 1999 accident. The Board also concludes that claimant is entitled to receive temporary total disability benefits as the greater weight of the medical evidence indicates that he is presently unable to work. Those conclusions are based upon the opinions from both claimant's treating physician and the physician selected by the Judge to perform an independent evaluation.

AWARD

WHEREFORE, the Board modifies the January 22, 2003 Post Medical Award entered by Judge Sample to award claimant temporary total disability benefits commencing February 5, 2001, at the rate of \$366 per week until such time that claimant is able to return to substantial and gainful employment.

The Board adopts the remaining orders set forth in the Post Medical Award that are not inconsistent with the above.

IT IS SO ORDERED.

¹ Wurster Depo. (July 1, 2002) at 61.

Dated this ____ day of April 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation